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Subject: Blue Virginia: North Carolina Document Dump Proves Terry McAuliffe's Pipeline Immunity Deals Are McAwful

[Blue Virginia: North Carolina Document Dump Proves Terry McAuliffe's Pipeline Immunity Deals Are McAwful](#)

by Jon Sokolow

When your attorney writes you a lousy contract, there's only one thing worse: another attorney telling you that your attorney screwed up.

If you are former Virginia Governor Terry McAuliffe and the lousy contract concerned Dominion Energy and its now \$7 billion and growing fracked gas Atlantic Coast Pipeline, you might feel embarrassed when the agreement – which was signed in secret – becomes public and Virginians learn that you agreed to cap Dominion's liability for damages before the pipeline was even built.

And the only thing worse than that? When the attorney for the Governor of North Carolina realizes just how awful Terry McAuliffe's deal was – and that also becomes public.

In early February, we broke a bombshell story about a secret \$58 million sellout, a pay-to-play immunity deal that McAuliffe signed in December with Dominion Energy and its partners in the Atlantic Coast Pipeline. We noted: "This agreement, apparently never before reported in Virginia, let Dominion buy its way out of paying for damages to Virginia's forests and water quality caused by construction of, and possibly by operation of, the ACP. And McAuliffe did this before the pipeline has even been approved – it still has not been approved – much less built."

A few days later, we broke another story in which we reported that McAuliffe had signed two similar secret immunity deals with the companies behind the proposed Mountain Valley Pipeline, making McAuliffe a "three-time sellout."

As we noted, one provision in the agreements states that the amount paid "fully satisfies any and all mitigation responsibilities related to and otherwise fully offsets the direct or indirect forest-related impacts" of the ACP. A second provision says that the amount paid "fully satisfies any and all mitigation responsibilities related to and otherwise fully offsets all water quality impacts caused by forest fragmentation." And a third catchall waiver provides that the amounts paid by the pipeline companies represents "the full extent of natural resources-related mitigation measures and investments contemplated" for the pipelines.

We also noted that the timing and language of these agreements strongly suggested that Terry McAuliffe was engaging in good old-fashioned pay-to-play schemes, taking payoffs in return for a promise that Virginia would give the state permits necessary for these pipelines to be built.

These stories attracted more than 33,000 readers and inspired a social media campaign by environmental groups. Several hours after the first story broke, the Associated Press ran its own story, quoting Governor Ralph Northam's spokesman, Brian Coy, as saying that "the agreement is a good deal for taxpayers and

wouldn't release the pipeline from liability should something go wrong." Mr. Coy wanted people to believe that the words "fully satisfies," fully offsets" and "the full extent...contemplated" mean something other than "fully."

The day after our story broke, however, Mr. Coy wrote this author and asked if we could "talk." Actually, Mr. Coy asked "could I have someone with more expertise than me (which I admit is almost anyone) call you" to explain why the agreements did not actually mean what they said. The promised call never came. But that didn't stop Mr. Coy from telling another reporter that McAuliffe's awful agreement "does not cede any legal authority to pursue damage claims." Again, the word "fully" apparently does not mean "fully."

Mr. Coy's habit of parroting the "fully is not fully" folly on a subject on which he admittedly has no "expertise" has led some to give him another avian-related nickname: "DeCoy," as in the wooden duck whose job is to convince people to look away from reality.

But "DeCoy" and his former boss, Terry "McAwful," were not counting on 33,000 people reading the liability waivers for themselves.

And Messrs. "DeCoy" and "McAwful" were not counting on this new bombshell:

North Carolina, while negotiating its own \$58 million pay-to-play deal with Dominion, could not stomach agreeing to the same liability waivers to which Virginia agreed. In fact, the General Counsel for Roy Cooper, the Governor of North Carolina, insisted on including language specifically to prevent the very waivers that now bind Virginia. We now know this because those drafts – and the handwritten notes of Governor Cooper's attorney – have just been released publicly.

And as with the Virginia agreements, it is pretty easy to see what happened – with or without a "DeCoy":

- Governor Cooper's General Counsel made handwritten notes on a draft prepared by the Atlantic Coast Pipeline companies in which he said that language should be added preserving claims by third parties;
- He prepared a new draft which, instead of waiving rights, said that Dominion and its partners "will take all reasonable measures...to provide for the restoration and preservation of North Carolina interior forest wildlife habitats where the ACP will be constructed, operated and maintained."
- The new draft stated that "nothing in this Memorandum shall be construed as precluding or otherwise barring the State of North Carolina from recovering damages or equitable remedies from Atlantic for spills or leaks stemming from the ACP."
- Governor Cooper's new draft stated that "Nothing in this Memorandum shall be construed as precluding or otherwise barring independent, third party claims regarding the ACP."

All of these protections for future claims against Dominion were included in the final agreement signed by Governor Cooper in North Carolina on January 25, 2018. None of those protections are in Virginia's deal with the Atlantic Coast Pipeline companies. Nor are they included in the Mountain Valley Pipeline agreements.

To be sure, the real problem with these deals is not the cap on liabilities, but the idea that these pipelines should even be built.

But what makes this story even more incredible is that the North Carolina agreement, which was publicly announced by the Governor's office, has been the subject of constant front-page coverage in North

Carolina. The North Carolina deal has been attacked as a “slush fund” and a “pay-to-play” deal, in which state permits for the ACP were sold for \$58 million. Most recently, landowners have called the North Carolina deal a \$58 million bribe. And there is good reason to believe that is what it was.

And yet here in Virginia, where the agreements for both the Atlantic Coast Pipeline and the Mountain Valley Pipeline were deliberately hidden from the public from late December (when they were signed) until Blue Virginia broke the stories in early February, there has been scant press attention to what, in reality, are far worse deals.

Why, until now, have there been no stories in Virginia about how these immunity deals were drafted and by whom?

Why are elected officials in Virginia at all levels and of all political stripes still silent about the fact that Terry McAuliffe waived rights that the Governor of North Carolina and his counsel clearly understood would be foolish to waive?

Why is there no public outcry?

Could it be that a wooden duck – shall we say, a DeCoy – has lulled Virginians into a false sense of security that Dominion Energy does not in fact own the Commonwealth of Virginia?

How long will this DeCoy last? Our guess: not long.

Virginia is an educated state. People can read. The truth will come out.

The only question that remains is whether leaders in Virginia will lead, whether they will ask questions, or whether they will remain silent.

Which side are they on?

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